



1 **I. BACKGROUND**

2 Plaintiff brings this action against Defendant in her capacity as the Commissioner of the  
3 Social Security Administration, pursuant the Social Security Act, 42 U.S.C. § 405(g). (Compl.,  
4 ECF No. 3). Plaintiff seeks judicial review of a final decision of the Commissioner of the  
5 Social Security Administration denying her claims for Social Security Disability (“SSD”)  
6 benefits and Supplemental Security Income (“SSI”) benefits under Titles II and XVI of the  
7 Social Security Act, 42 U.S.C. § 416(i), 23, 1381–1382c. (*Id.* ¶ 3).

8 Plaintiff applied for SSD benefits on October 27, 2010, and SSI benefits on September  
9 19, 2012, which were denied initially and upon reconsideration. (*Id.* ¶ 6); (Admin. R. (“A.R.”)  
10 at 42, ECF No. 14-1). Plaintiff requested a hearing before an Administrative Law Judge  
11 (“ALJ”), who ultimately issued an unfavorable decision denying Plaintiff’s benefits claim.  
12 (Compl. ¶ 7); (A.R. at 39–49). Plaintiff timely requested Appeals Council review of the ALJ’s  
13 decision, which was denied on August 22, 2014. (Compl. ¶ 8).

14 **II. LEGAL STANDARD**

15 A party may file specific written objections to the findings and recommendations of a  
16 United States Magistrate Judge made pursuant to Local Rule IB 1–4. 28 U.S.C. § 636(b)(1)(B);  
17 D. Nev. Local R. IB 3-2. Upon the filing of such objections, the Court must make a *de novo*  
18 determination of those portions of the Report to which objections are made. *Id.* The Court may  
19 accept, reject, or modify, in whole or in part, the findings or recommendations made by the  
20 Magistrate Judge. 28 U.S.C. § 636(b)(1); D. Nev. Local R. IB 3-2(b).

21 **III. DISCUSSION**

22 The Commissioner presents two objections to the Report and Recommendation. First,  
23 the Commissioner challenges Judge Foley’s finding that “the ALJ erred in rejecting the  
24 opinions of the treating physicians . . . because they were based on his finding that those  
25 opinions were inconsistent with the medical evidence.” (Obj. 4:16–18, ECF No. 26). This

1 argument misunderstands Judge Foley’s findings, however. Judge Foley did not find error with  
2 regard to the medical evidence supporting the opinions of Plaintiff’s treating physicians but  
3 rather faulted the ALJ for appearing to require “objective clinical findings” to support  
4 Plaintiff’s complaints of pain. (R. & R. 22:11–12); (*see also id.* 21:16–18). The Ninth Circuit  
5 has held that an ALJ commits error “by effectively requiring objective evidence for a disease  
6 that eludes such measurement.” *Benecke v. Barnhart*, 379 F.3d 587, 593–94 (9th Cir. 2004).  
7 Here, the ALJ repeatedly emphasized the lack of objective medical evidence to support  
8 Plaintiff’s claims of subjective pain. (A.R. at 46–47, ECF No. 14-1). As Judge Foley stated,  
9 “the ALJ ignored the nature of fibromyalgia.” (*Id.* 22:12).

10       Next, the Commissioner challenges Judge Foley’s conclusion that “the ALJ did not  
11 adequately address Plaintiff’s fibromyalgia diagnosis and this oversight undermines the  
12 legitimacy of his reasons for rejecting Plaintiff’s credibility.” (Obj. 5:9–11). On this point, the  
13 Commissioner argues that “[t]he ALJ evaluated Plaintiff’s pain complaints allegedly caused by  
14 degenerative disc disease and fibromyalgia and concluded that Plaintiff’s statements  
15 concerning the intensity, persistence, and limiting effects of her subjective pain complaints  
16 were not credible.” (*Id.* 5:12–15). Again, the Commissioner misunderstands Judge Foley’s  
17 reasoning.

18       The ALJ considered several factors in reaching his determination with respect to  
19 Plaintiff’s credibility including that Plaintiff “has undergone only conservative treatment” and  
20 that Plaintiff “made no mention that her lay-off was the result of her an [sic] inability to engage  
21 in her work duties.” (A.R. at 47). As Judge Foley noted, “[t]here is no evidence that she failed  
22 to follow a recommended course of treatment.” (R. & R. 22:19–20). Moreover, Judge Foley  
23 pointed out that contrary to the ALJ’s report, Plaintiff testified regarding her belief that missing  
24 work due to pain “had a lot to do” with why she was laid off from her previous employment.  
25

1 (Id. 22:28–23:1). The Court agrees that “the ALJ’s reason for rejecting Plaintiff’s credibility  
2 on this ground was erroneous.” (Id. 23:1–2).

3 Having reviewed the Commissioner’s objections *de novo*, the Court finds no basis on  
4 which to reject Judge Foley’s findings and recommendations. The Court therefore remands this  
5 case for further proceedings consistent with Judge Foley’s Report and Recommendation.  
6 Among other things, the ALJ must determine whether Plaintiff’s fibromyalgia symptoms are so  
7 severe as to disable her from performing sedentary work.

8 **IV. CONCLUSION**


9 **IT IS HEREBY ORDERED** that the Report and Recommendation, (ECF No. 24), be  
10 **ACCEPTED** and **ADOPTED** in full, to the extent that it is not inconsistent with this Order.

11 **IS FURTHER ORDERED** that Plaintiff’s Motion to Remand, (ECF No. 16), is  
12 **GRANTED** and this case is hereby **REMANDED** to the Administrative Law Judge. The  
13 Clerk of Court shall remand this case back to the Administrative Law Judge and thereafter  
14 close this Court’s case.

15 **IT IS FURTHER ORDERED** that the Commissioner’s Motion to Extend Time, (ECF  
16 No. 25), is **GRANTED**.

17 **IT IS FURTHER ORDERED** that the Commissioner’s Cross-Motion to Affirm, (ECF  
18 No. 19), is **DENIED**.

19 **DATED** this 13 day of April, 2017.

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23 Gloria M. Navarro, Chief Judge  
24 United States District Judge  
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